

RESOLUTION NO. 2008-27

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE  
CITY MANAGER TO EXECUTE AGREEMENT BETWEEN CITY OF LODI AND  
CITY OF ELK GROVE FOR PURCHASE OF COMPRESSED NATURAL GAS  
AT CITY OF LODI'S MUNICIPAL SERVICE CENTER AND EXTENSION

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WHEREAS, the city of Elk Grove contacted the City of Lodi's Fleet and Facilities Manager with a request to fill some of its compressed natural gas (CNG)-powered buses on a short-term, emergency basis when one of its regular CNG fueling stations became unavailable; and

WHEREAS, the city of Elk Grove's short-term needs will continue months longer than expected as it will be building a new CNG fueling station to offset the existing CNG station loss. The city of Elk Grove is now advertising for bids for construction of its new CNG fueling station, but construction will not be completed until June 2008. Should construction take longer than anticipated, an extension may be needed; and

WHEREAS, City staff recommends that an agreement to use the City's CNG fueling station at the MSC be formalized and that the City Manager be authorized to execute the attached agreement; and

WHEREAS, the City of Lodi will charge the city of Elk Grove the current cost per therm charged by PG&E to Lodi, plus maintenance and operation costs, administrative fees and taxes, and a CNG station depreciation/replacement charge.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby authorizes the City Manager to execute an agreement with the city of Elk Grove to purchase CNG at the City of Lodi's MSC fueling station; and

BE IT FURTHER RESOLVED that the Lodi City Council hereby authorizes the City Manager to execute an extension to the agreement not to exceed one year; and

BE IT FURTHER RESOLVED that the charge for the CNG will be the current cost per therm charged by PG&E to Lodi, plus maintenance and operation costs, administrative fees and taxes, and a CNG station depreciation/replacement charge.

Dated: February 20, 2008

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I hereby certify that Resolution No. 2008-27 was passed and adopted by the City Council of the City of Lodi in a regular meeting held February 20, 2008, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Katzakian, and  
Mayor Mounce

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None

  
RANDI JOHL  
City Clerk

## AGREEMENT TO USE CNG FUELING STATION

This Agreement is made and entered into February \_\_\_\_, 2008 ("Effective Date"), by and between the City of Lodi, a municipal corporation ("Lodi"), and the City of Elk Grove, a municipal corporation ("Elk Grove").

WHEREAS, Lodi is the owner of a CNG Fueling Station located at its Municipal Service Center, 1331 South Ham Lane, Lodi, San Joaquin County, California ("CNG Facility"); and

WHEREAS, Elk Grove desires to temporarily use the CNG Facility for the purpose of fueling certain buses in its municipal fleet: and

WHEREAS, Lodi has consented to the use of the CNG Facility on the terms and conditions detailed below.

NOW, THEREFORE, the parties agree as follows:

1. Lodi will permit Elk Grove to **use** the CNG Facilities, for the sole purpose of fueling buses in its municipal fleet. Elk **Grove** will **be** charged per gallon of Compressed natural gas and billed monthly for charges incurred, as follows: the current cost per therm (at the rate charged by PG&E to Lodi) X 1.278 (conversion factor) plus \$0.42 per gallon for maintenance and operation costs, administration fees and taxes<sup>1</sup>, and plus \$0.27 per gallon for CNG Station **depreciation/replacement** charge<sup>2</sup>.

Payment by Elk Grove is due and payable upon receipt of Lodi's invoice and delinquent if not paid in full within **15-days** of receipt.

2. The term of this Agreement shall be from September 1, 2007, through December 31, 2008 ("Term").

3. Employees of Elk Grove using the CNG Facilities are required to receive training by Lodi in the proper use of the CNG Facilities prior to **use**.

4. In the event that the CNG Facility is damaged by employees or agents of Elk Grove during the Term of this Agreement, Elk Grove agrees to reimburse the City for all costs incurred by the City that are necessary to return the CNG Facility to its condition prior to the damage.

5. Elk **Grove** acknowledges that no more than **two** (2) buses are permitted at any one time at the CNG Facility and that buses waiting for fueling will be staged at an area designated by Lodi's Fleet & Facilities Manager or his designee. Elk Grove also

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<sup>1</sup> Cost per therm X 1.278 + \$0.20 maintenance & operation + \$0.10 administration + \$0.12 taxes = price per gallon of CNG fuel.

<sup>2</sup> CNG Station **Depreciation/Replacement** Charge = + \$0.27 per gallon of CNG fuel.

acknowledges and agrees that Lodi buses and fleet vehicles have priority to fuel at the CNG Facility, and may move ahead of Elk Grove buses then fueling, if **necessary**, to meet Lodi's fueling requirements. Should **Elk** Grove's fueling at the CNG Facility deplete the storage **and/or** availability of fuel for Lodi buses and fleet vehicles, the number of **Elk** Grove **buses** permitted to fuel may **be** limited. Lodi's Fleet & Facilities Manager or his designee retain the **sole** discretion to limit the number of Elk Grove buses permitted to fuel at the CNG Facility during the Term of this Agreement.

6. This Agreement may be terminated by either **party** at any time upon 10-days written notice to the other. Notice shall be given as provided in paragraph 11 below.

7. Elk Grove agrees **to** indemnify, defend and hold Lodi harmless from and against any and all claims, losses, damages, expenses, judgments and costs, including attorneys' fees and court costs, resulting from Elk Grove's **use** of the CNG Facility during the Term of this Agreement

8. Upon execution of this Agreement, Elk Grove shall provide Lodi with documentation confirming that contract employees of **Elk** Grove are to be considered **solely** as employees of the City of Elk Grove while said contract employees are using the CNG Facility or are on the grounds of Lodi's Municipal Service Center, and further that such contract employees are not covered under any existing contract that the City of Lodi may have with Elk Grove's current transportation contractor or any future transportation contractor that may be under contract **with** Elk Grove.

9. Elk Grove shall, at its own expense, maintain in full force and effect during the term of this Agreement a policy of at least \$5,000,000 comprehensive public liability and auto liability insurance against any liability resulting from Elk Grove's **use of** the CNG Facility under this Agreement. Lodi **shall be** named **as** an additional insured and **all** policies shall be written on a primary basis. Elk Grove shall be able to furnish a certificate of such insurance or evidence of coverage provided under any self-insurance program maintained by Elk Grove immediately following execution of this Agreement.

10. Elk Grove may not assign *its* rights under this Agreement to any other **party**.

11. Any notice required to **be** given by the terms of this Agreement shall be in writing signed by an authorized representative **of** the sender and shall be deemed to have been given when the same is personally **sewed** or upon receipt by express or overnight delivery, postage prepaid, **or** in three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To Lodi:	City of Lodi
	Richard Prima, Public Works Director
	221 West Pine Street
	P.O. Box 3006
	Lodi, CA 95241-1910

To Elk Grove:           City of Elk Grove  
Carlos Tobar, Transit System Manager  
10250 Iron Rock Way  
Elk Grove, CA 95624

12. This Agreement contains the entire agreement between the parties relating to the rights granted and obligations assumed under it. Any amendments or modifications to this Agreement will not be effective unless contained in a writing signed by both parties.

13. This Agreement shall be interpreted and construed under the laws of the State of California. The forum for any dispute arising out of this Agreement shall be the San Joaquin County Superior Court.

IN WITNESS WHEREOF, this Agreement has been entered into as of the effective date as written above

CITY OF LODI  
a municipal corporation

CITY OF ELK GROVE  
a municipal corporation

By: \_\_\_\_\_  
BLAIR KING  
City Manager

By: \_\_\_\_\_  
JIM ESTEP  
Interim City Manager

ATTEST:

ATTEST.

By \_\_\_\_\_  
RANDI JOHL  
City Clerk

\_\_\_\_\_  
PEGGY JACKSON  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
JANICE D. MAGDICH  
Deputy City Attorney

By: \_\_\_\_\_  
SUSAN BURNS COCHRAN  
City Attorney